

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

In the Matter of the Search of
UTStarcomm Metro PCS Silver
Model No.: CDM8932
FCC ID: PP4PN-320
Serial No.: 6460041835

UTStarcomm Metro PCS Silver
FCC ID: PP4PN-320
Serial No.: 6460041834

Motorola i450
Model No.: H65XAN6RR4BN
FCC ID: AZ489FT58844
Serial No.: 364KGG16M7

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APPLICATION AND AFFIDAVIT

FOR SEARCH WARRANT

BY: *EC* DEPUTY

CASE NUMBER: 08CR0109-LAH *km*

08 MJ 2013

I, Kathleen Martell, being duly sworn depose and say:

I am a Special Agent with the United States Immigration and Customs Enforcement, and have reason to believe that property or premises known as:

See Attachment A

in the Southern District of California there is now concealed a certain person or property, namely,

Telephone numbers of incoming and outgoing calls stored in the call registry, telephone numbers and corresponding names to those numbers in the cellular telephone's address book, any incoming and outgoing text messages, stored photographic mages, and telephone subscriber information.

which is: Subject to seizure under Rule 41(b)(1) of the Federal Rules of Criminal Procedure because the property constitutes evidence of the commission of criminal offenses or instrumentalities used in committing criminal offenses. The criminal offenses at issue are violations of: (1) Title 21, United States Code, Section 952 and 960, importation of a controlled substance, and (2) Title 21, United States Code, Sections 841 (a)(1), Possession of a controlled substance with intent to distribute, (3) Title 21 United States Code Section 846, attempt and conspiracy.

The facts support a finding of Probable Cause are as follows:

See Affidavit of Kathleen Martell.

Continued on the attached sheet and made a part thereof. ☒ Yes ☐ No

Kathleen Martell
Kathleen Martell

Special Agent

United States Immigration and Customs Enforcement

United States Department of Homeland Security

*Application for Warrant for Search Warrant for
3 cellular telephones*

Sworn to before me, and subscribed in my presence

7/1/08 at San Diego, California
Date City and State

HON. BARBARA L. MAJOR
UNITED STATES MAGISTRATE JUDGE
Name and Title of Judicial Officer

Barbara L. Major
Signature of Judicial Officer

Attachment A

DESCRIPTION OF PROPERTY TO BE SEARCHED:

Silver, UTStarcom Metro PCS Silver Cellular telephone. This telephone is identified by Model number CDM8932, FCC ID: PP4PN-320, Serial number: 6460041835. The Cellular phone is currently in the custody of Special Agent Kathleen Martell.

Silver, UTStarcom Metro PCS Silver Cellular telephone. This telephone is identified by Model number CDM8932, FCC ID: PP4PN-320, Serial number: 6460041834. The Cellular phone is currently in the custody of Special Agent Kathleen Martell.

Gray and white, Motorola i450. This telephone is identified by Model number H65XAN6RR4BN, FCC ID: AZ489FT5844, Serial number: 364KGG16M7. The Cellular phone is currently in the custody of Special Agent Kathleen Martell.

A F F I D A V I T

I, Kathleen Martell, being duly sworn, hereby depose and say:

1. I am a Special Agent (S/A) with the United States Immigration and Customs Enforcement (ICE) and have been so employed since 2003. Prior to my current employment, I was an officer with the legacy Immigration and Naturalization Service (INS) for three years. I have conducted criminal investigations of or relating to narcotics smuggling. I have received specific training in the area of narcotics investigations, and I have training and experience in the methods used by narcotics traffickers to import and distribute drugs. I am presently assigned to Operation Alliance, a Border Drug Enforcement Task Force in San Ysidro, California, and my duties include investigating the illicit trafficking of controlled substances into the United States of America. I am cross-designated by the United States Drug Enforcement Administration to conduct narcotics investigations and enforce the provisions of the Federal Controlled Substance Act, pursuant to Title 21, United States Code.

2. This statement is made in support of an application for a search warrant to search a cellular telephone that is believed to contain evidence of violations of Title 21, United States Code, Sections 952 and 960, importation of a controlled substance, Title 21, United States Code, Sections 841 (a)(1), possession of a controlled substance with intent to distribute, and Title 21 United States Code Section 846, attempt and conspiracy.

3. This affidavit does not contain all of the information known to Agents regarding this investigation, but rather, contains only those facts believed to be necessary to establish probable cause.

ITEM TO BE SEARCHED

4. The item to be searched is further described as follows:

a. Item #1: A Silver, UTStarcom Metro PCS silver cellular telephone. This telephone is identified by model number CDM8932, FCC ID: PP4PN-320, serial number: 6460041835. The cellular telephone is presently in the custody Kathleen Martell, Special Agent, Immigration and Customs Enforcement.

b. Item #2: A Silver, UTStarcom Metro PCS silver cellular telephone. This telephone is identified by model number CDM8932, FCC ID: PP4PN-320, serial number: 6460041834. The cellular telephone is presently in the custody Kathleen Martell, Special Agent, Immigration and Customs Enforcement.

c. Item #3: A Gray and white, Motorola i450 cellular telephone. This telephone is identified by model number H65XAN6RR4BN, FCC ID: AZ489FT5844, serial number 364KGG16M7. The cellular telephone is presently in the custody Kathleen Martell, Special Agent, Immigration and Customs Enforcement.

ITEMS TO BE SEIZED

5. The items to be seized are evidence of violations of Title 21, United States Code, Sections 952 and 960, importation of a controlled substance, Title 21, United States Code, Sections 841 (a)(1), possession of a controlled substance with intent to distribute, and Title 21 United States Code Section 846, attempt and conspiracy. I request any and all electronically stored information found subsequent to the search of the two silver UTStarcom Metro PCS Silver and Motorola i450 cellular telephones, including including but not limited to, telephone numbers of incoming and outgoing calls stored in the call registry, telephone numbers and corresponding names to those numbers in the cellular telephone's address book, any incoming and outgoing text messages, stored photographic images, and telephone subscriber information.

PROBABLE CAUSE

6. Based upon my training and experience as a Special Agent, consultations with other Special Agents and law enforcement officers experienced in drug trafficking investigations and all the facts and opinions set forth in this affidavit, I know the following:

- a. Drug traffickers will use digital and cellular phones because they are mobile, they have instant access to phone calls and voice messages;
- b. Drug traffickers believe that cellular phones provide greater insulation and protection against court ordered wiretaps and they believe in the inability of law enforcement personnel to simultaneously track the originating and destination phone numbers of calls placed to and from their digital and cellular phones.

7. On January 25, 2007, at approximately 7:50 a.m., Jose SOLIS and Gabriel Albert GARCIA entered the United States from Mexico through the San Ysidro, California (CA) Port of Entry (POE). SOLIS was the driver of a 1995 Toyota T100 bearing California license plate 8B67227. GARCIA was the passenger.

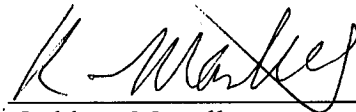
8. On January 25, 2007, at approximately 7:50 a.m., U.S. Customs and Border Protection Officer (CBPO) Gregory Olsen encountered GARICA and SOLIS. The vehicle was escorted to the secondary inspection area for further inspection. CBPO Olsen observed two duffle bags in the rear seat of the vehicle. In one of the bags, CBPO Olsen discovered a black plastic bag with what appeared to be a large (5 liter) bottle of tequila with the label, "Tequila Joven-De Los Dorados". The bottle contained a liquid with particles suspended in it that appeared too thick to be tequila.

9. On January 25, 2007, at approximately 8:30 a.m., Customs and Border Protection Officer (CBPO) Steven Dinh field-tested a sample from the crystallizations around the cap area of the tequila bottle. The sample field-tested positive for the properties of Methamphetamine. A

total of one container was removed from the vehicle. The Net weight of the container was 5.30 kilograms.

10. In addition to the seizure of the vehicle and the methamphetamine at the time of SOLIS' and GARCIA's arrests, Customs and Border Protection Officers also seized three cellular phones as evidence, a silver, UTStarcom Metro PCS silver cellular telephone identified by model number CDM8932, FCC ID: PP4PN-320, serial number: 6460041835, a silver, UTStarcom Metro PCS silver cellular telephone identified by model number CDM8932, FCC ID: PP4PN-320, serial number: 6460041834, and a gray and white, Motorola i450 cellular telephone identified by model number H65XAN6RR4BN, FCC ID: AZ489FT5844, serial number 364KGG16M7 which were in the possession of SOLIS and GARCIA at the time of arrest. On January 25, 2007, Customs and Border Protection Officers transferred custody of the aforementioned cellular phones to Immigration and Customs Enforcement Officer Kathleen Martell. These cellular phones have been in the custody of Immigration and Customs Enforcement since that time.

11. Based on the facts contained in this affidavit and my experience and training, I believe that there is probable cause to believe that the cellular telephone contains evidence of violations of Title 21, United States Code, Sections 952 and 960, importation of a controlled substance, Title 21, United States Code, Sections 841 (a)(1), possession of a controlled substance with intent to distribute, and Title 21 United States Code Section 846, attempt and conspiracy.



Kathleen Martell
SPECIAL AGENT, ICE

Sworn to and subscribed to before me

This 1st day of July, 2008.


UNITED STATES MAGISTRATE JUDGE
HON. BARBARA L. MAJOR

Search Warrant for 3 cellular phones